IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO: 7315 of 1998

Between:

Md. Suleman, S/o. late Md. Yousuf,
2c/42,APSEB Quarters, Mothugudem,
Chentur Morla, Khammam District.

... PETITIONER

AND

1. The Member Secretary, APSEB Vidyuth Soudha,
   Somajiguda, Hyderabad.
2. The Superintending Engineer, O&M Circle, APSEB,
   Mothugudem, Khammam-507 113.
3 The Director Personnel, APSEB, Vidyuth Soudha,
   Somajiguda, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order, direction or a Writ one in the nature of 'MANDAMUS' declaring i) the clause (i) under para 2 of the Memo No. DS (PS).DM VI/678/90-2, dt.18.7.9. ii) the action of the respondents in collecting an amount of Rs.32,168-47 ps. towards interest on retrenchment compensation from 1.7.76 to 15.9.94. iii) the denial of pensionery benefits to the Petitioner from 1.6.61 under the guise of para 3 of the Memo No. DS (PS)/DM VI/ 678/90-2, dt.18.7.92 iv) in not counting the past service of the petitioner contrary to Rule 33(a) Note 2 APSEB Service Regulation Part I to the purpose of counting pensionery & other retirement benefits as illegal, arbitrary and unconstitutional and consequently, struck down clause (i) of para 2 of the Memo No. DS (PS)/DM VI/ 678/90-2, dt.18.7.92 of the first respondent and further direct the respondents (i) to grant and pay the pensionary benefits counting the petitioner's service from 1.6.61 along with interest (ii) to refund the amount of Rs.32,168-47 ps recovered as interest on retrenchment compensation from 1.7.76 to 15.9.94 along with interest and costs of this Writ Petition.

Counsel for the Petitioner: MR. A. SRINIVASA SARMA
Counsel for the Respondents: MR. S. RAVINDRANATH

The Court made the following:

ORDER: -

This writ petition is filed seeking *mandamus* declaring the Clause (i) under Para 2 of the Memo No. DS (PS)/DM VI/678/90-2, dated
18-07-1992, wherein an amount of Rs.32,168-47 ps was collected towards interest paid on retrenchment compensation from 01-07-1976 to
15-09-1994 etc., as arbitrary and illegal and also to declare that the petitioner be allowed with consequential benefits treating the period from 30-06-1976 to 22-03-1977, as a continuous period for the purpose of retirement benefits, drawal of increments, fixation of pension etc.

2. It is the case of the petitioner that he was appointed into the respondent organization with effect from 01-06-1961 and was promoted as Heavy Vehicle Driver-II with effect from 01-01-1964. He was transferred from USHES to LSHES on 13-02-1970. However, his services were terminated for want of vacancy with effect from 30-06-1976 and
he was paid gratuity, retrenchment compensation and one month's salary in lieu of notice. He was again taken into service on 23-03-1977. Since he had put in more than 15 years continuous and blemished service even prior to his retrenchment on 30-06-1976, he was re-appointed on
23-03-1977. He made a petition for regularizing the service for the period from 30-06-1976 to 22-03-1977. Though the Divisional Engineer, Generation Division, Mothugudem, considered for regularizing the period from 30-06-1976 to 22-03-1977 as per the Memo No. DS (PS)/DV.VII/678/90-2 dated 18-07-1992 issued by the first respondent through Memo dated 13-09-1994, sought to collect interest on the gratuity, compensation and one month's salary paid on 30-06-1976 i.e., the interest from 01-07-1976 to 15-09-1994 i.e., 18 years 2 months which works out to Rs.32,168-47 ps. According to the petitioner, the collection of

Rs.32,168-47 ps. against the original amount paid towards gratuity,
one month's salary and compensation of Rs.6,692-93 ps. is arbitrary and illegal.

3. Though no counter affidavit is filed by the respondents,
Sri Samineni Kishore, learned Standing Counsel for the respondents strenuously contends that the petitioner having withdrawn the gratuity and the compensation amount as paid by the respondents, if he seeks that his services between 30-06-1976 to 22-03-1977 be regularized, there is no option for him except to pay the interest as calculated in the Memo dated 13-09-1994, therefore, the action of the respondents can be said to be neither arbitrary nor illegal.

4. I have given my earnest consideration to the respective submissions made by the learned Counsel on either side and perused the material placed on record.

5. The very impugned memo was issued in the year 1992 contemplating to regularize the services of the employees whose services were terminated for want of vacancies and were subsequently
re-appointed. The case of the petitioner squarely falls into this. He was appointed into the service of the respondent-Board with effect from
01-06-1961 and his services were retrenched for want of vacancy on
30-06-1976. Thereafter he was re-appointed with effect from 23-03-1977. Therefore, he was entitled for regularization of the said period from
30-06-1976 to 22-03-1977 for the purpose of terminal benefits like gratuity etc. While applying the said Memo dated 18-07-1992, for the purpose of regularizing his services from 30-06-1976 to 22-03-1977, the respondents applied clause (i) of Para 2 of the said Memo dated
18-07-1992. It is an unfortunate case that when the petitioner was retrenched with effect from 30-06-1976, he was paid compensation amount of Rs.3,132-32 ps., gratuity of Rs.3,137-30 ps. and one month's salary in lieu of notice of Rs.418-31 ps., and in total he was paid
Rs.6,692-93 ps. on 30-06-1976; but for the purpose of regularizing the services between 30-06-1976 to 22-03-1977, he was asked to pay the interest from 01-07-1976 to 15-09-1994 i.e. for 18 years 2 months and 15 days which comes to

Rs.32,168-47 ps. Since he was at the verge of retirement, the petitioner for the purpose of regularization of his services paid the said amount on 14-06-1996. Thereafter, filed the present writ petition.

6. The Memo dated 18-07-1992 does not contemplate collecting of interest at GPF rate, right from the date of retrenchment compensation paid to the petitioner, i.e. from 30-06-1976 till the amounts were refunded for regularization of services. This Memo dated 18-07-1992 is sought to be applied with retrospective effect misconstruing that the petitioner is supposed to pay interest at GPF rate for the period from 01-07-1976 to 15-09-1994 i.e. for 18 years 2 months and 15 days. If that is the purpose, there is no benefit conferred on the petitioner, since as per the calculations of the department an amount of Rs.6,692-93 ps. was paid to him on 30-06-1976. The interest of Rs.32,168-47 ps apart from the principal amount of Rs.6,692-93 ps. is sought to be recovered, which is arbitrary and illegal. At the most, the department is at liberty to calculate the interest from the date of issuance of the impugned Memo dated 18-07-1992. Therefore, the recovery made by the respondents is arbitrary and the Memo dated 13-09-1994 of the Divisional Engineer, Generation Division, Mothugudem, is set aside. However, it is open to the respondents to calculate the interest from 18-07-1992, if they are so advised against the amounts paid on 30-07-1976, excluding one month's salary. It is needless to mention the petitioner is entitled for sanction of increments on regularization of his services for the period from 30-06-1976 to 22-03-1977 under Rule 33 (a) Note 2 of A.P.S.E.B. Service Regulations Part-I.

7. In the result, the writ petition is allowed directing the respondents to refund the amount recovered from the petitioner on 14-06-1996 after deducting interest from 18-07-1992 to 14-06-1996 only on the amounts of gratuity and retrenchment compensation, within a period of three months from the date of receipt of a copy of this order.

C. V. RAMULU, J

Dt.22-06-2005

GLV/PRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice, on this

Wednesday the Twenty Second day of June Two thousand and five.

ASSISTANT REGISTRAR

Copies to:

1. The Member Secretary, APSEB Vidyuth Soudha, Somajiguda, Hyderabad.
2. The Superintending Engineer, O&M Circle, APSEB, Mothugudem, Khammam-507 113.
3 The Director Personnel, APSEB, Vidyuth Soudha, Somajiguda, Hyderabad.

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